

Aunt Millie's Sauces, Inc. and Aunt Millie's Sauces Division of Specialty Brands, Inc. and United Food and Commercial Workers Union, Local 464A, United Food and Commercial Workers International Union, AFL-CIO, CLC, Petitioner. Case 2-RC-18899

November 16, 1981

**DECISION ON REVIEW AND
CERTIFICATION OF RESULTS OF
ELECTION**

**BY MEMBERS FANNING, JENKINS AND
ZIMMERMAN**

On May 7, 1981,¹ the Acting Regional Director for Region 2 issued his Supplemental Decision and Direction of Second Election in the above-entitled proceeding, in which he sustained Petitioner's Objections 1 and 3, set aside the election held on March 4,² and directed a second election. Thereafter, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review in which it contended that a substantial question of law or policy is raised because of the absence of, or a departure from, officially reported Board precedent.

By mailgram dated June 10, the National Labor Relations Board granted the Employer's request for review³ and stayed a second election pending decision on review. Neither party submitted a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with regard to the issues under review and makes the following findings:

On January 12, Specialty Brands, Inc., agreed to purchase Aunt Millie's Sauces, Inc. On February 13, these companies entered into a contract of sale, with closing set for February 27, less than a week before the March 4 election in this proceeding. On February 17, Specialty Brands advised the Aunt Millie's employees of the pending sale, gave each employee a formal written offer of employment with Specialty Brands, and advised these employees that they would be given wages and benefits in accordance with the standards and job classifica-

tions established and utilized by Specialty Brands throughout its corporatewide operations. On March 2, Aunt Millie's Sauces Division of Specialty Brands, Inc., commenced operation with the new—and generally better—wages and benefits in effect.

In sustaining Objection 1,⁴ the Acting Regional Director found that Specialty Brands had interfered with the free exercise of employee voting rights when, on February 17, 2 weeks before the election, it announced to employees of Aunt Millie's its proposed wage and benefits package as the terms under which it sought their application for employment. The Acting Regional Director found that Specialty Brands had failed to provide a valid business reason for announcing the new wage and benefits package when it did and that such failure made it "reasonable to assume that the announcement was timed to influence the employees in their choice of bargaining representative." The Employer contends that its conduct was not objectionable under well-established Board precedent, noting that the purpose of the wage and benefit changes announced at the time of the offers of employment was to bring the Aunt Millie's employees into line with the wages and benefits in effect at Specialty Brands' facilities everywhere else; that similar offers were made to nonunit employees; that the offers were in no way excessive; that the Union was not mentioned at the time the offers were made; and that the offers were implemented at the outset of Specialty Brands' takeover as part of a more general overhaul of Aunt Millie's entire business. We find merit in the Employer's contentions and agree that it is unreasonable to presume that the announcement of wage and benefit changes, which was clearly timed to the Employer's takeover schedule and conditioned upon acceptance of the Employer's offer of employment, was intended to influence the employees in their choice of bargaining representative.

Contrary to the Acting Regional Director, we find that there was a valid business reason for the initial terms of employment which the Employer selected here. Thus, the facts before us clearly show that the Employer's announced plan to conform wages and benefits at its Aunt Millie's facility with the existing arrangements at its other operations is consistent with normal business practices. This conclusion is further buttressed by the Employer having scheduled implementation of the wage and benefit adjustments in strict accordance

¹ All dates are in 1981, unless otherwise stated.

² The tally of ballots showed that, of approximately 31 eligible voters, 32 ballots were cast, of which 12 were for, and 16 against, Petitioner and 4 ballots were challenged. The challenges were insufficient in number to affect the results of the election.

³ In granting review, the Board implicitly denied Employer's alternative request for a hearing on the Employer's purpose in making the wage offer discussed below.

⁴ Objection 1 alleged: "During the critical period, the employer on numerous occasions unlawfully promised wage increases, implying that if the Union was voted in there would be no raise, or for the purpose of discouraging employees from voting for Petitioner."

with its purchase time table; and, although that implementation occurred 2 days prior to the election, there is no evidence that such implementation was for any unlawful purpose. Indeed, there was no mention of the Union or of the pending election at the time the initial terms of employment were announced. Nor was there any evidence that the Employer was influenced in its action by the pendency of the question concerning representation, or that the Employer acted in any way inconsistent with usual practices during the acquisition of Aunt Millie's.⁵ Accordingly, we overrule Objection 1.⁶

In sustaining Objection 3,⁷ the Acting Regional Director considered the comments of Specialty Brands' executive, Bob Mech, who had described the collective-bargaining process and admittedly used the phrase "bargaining starts from scratch," in the general context of the above-discussed Febru-

⁵ See, generally, *N.L.R.B. v. Burns International Security Services, Inc.*, 406 U.S. 272, 294-295 (1972), where the Supreme Court held that a successor employer is privileged, in the absence of a plan to retain all of the employees in a represented unit, to establish the initial terms and conditions of employment unilaterally. A successor employer, under no obligation to any representative of its predecessor's employees, has no lesser rights. See also *Essex International, Inc.*, 216 NLRB 575, 576 (1975), and *Norfolk Carolina Telephone Company*, 234 NLRB 1235, 1236 (1978), for a discussion of the legal implications of a grant of benefits during the critical period.

⁶ In view of our holding herein, we find it unnecessary to consider the other issues presented in the request for review.

⁷ Objection 3 alleged: "During the critical period, the employer unlawfully threatened to withhold benefits for the purpose of coercing and discouraging employees from voting for Petitioner."

ary 17 announcement of future benefits. As we have overruled Objection 1, we have eliminated the basis upon which the Acting Regional Director concluded that the phrase as used here carried with it the seed of a threat. Moreover, the Employer's election bulletin correctly stated the law as to "The Facts About Collective Bargaining." Accordingly, we overrule Objection 3.⁸ As we have overruled Petitioner's objections and, since Petitioner did not receive a majority of the valid votes, we shall certify the results of the election held on March 4.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for United Food and Commercial Workers Union, Local 464A, United Food and Commercial Workers International Union, AFL-CIO, CLC, and that said labor organization is not the exclusive representative of all the employees in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

⁸ Cf. *Taylor-Dunn Manufacturing Company*, 252 NLRB 799, 800 (1980); *Coach and Equipment Sales Corp.*, 228 NLRB 440, 440-441 (1977), in which the Board found "bargaining from scratch" language violative of Sec. 8(a)(1) of the Act, but recognized that such statements are not unlawful when other communications make it clear that any reductions in wages or benefits will occur only as a result of the normal give-and-take of negotiations.